

## REMARKS/ARGUMENTS

### Status of the Claims

Claims 1-3 and 5-22 are pending with entry of this amendment, claim 4 having been previously cancelled. Claims 2-10 are withdrawn.

Claims 1, 12, 13, 17, 21 and 22 are amended herein. These amendments introduce no new matter and support is replete throughout the specification. These amendments are made without prejudice and are not to be construed as abandonment of the previously claimed subject matter or agreement with any objection or rejection of record.

With respect to claim 1, the housing of a product within a cavity – and a frame having an opening and mounted on or in a surface of a cavity – can be found, e.g., at paragraph [0021] and elsewhere. Support for a pivot assembly located adjacent an opening of the cavity is provided, e.g., in the figures as filed and elsewhere.

With respect to claims 12, 13 and 17, the first and/or second panels being coplanar with the frame is supported throughout the specification, claims and figures as filed. For example, see paragraph [0022] of the specification and Figure 4.

With respect to claim 21, support for an apparatus configured to receive the recited products can be found, e.g., at paragraphs [0012] and [0028].

With respect to claim 22, support for a frame configured to be mounted on or in a surface selected from a ceiling, a wall, a floor, a desktop, and a part of a piece of furniture can be found in the specification at, e.g., paragraph [0012].

Applicants submit that no new matter has been added to the application by way of the above Amendment. Accordingly, entry of the Amendment is respectfully requested. Applicants traverse all rejections and objections, to the extent that they are applied to the amended claims.

### Amendments to the Drawings

With respect to the Drawings, Figure 3 is amended herein to include a motor connected to the pivot assembly – as requested by the Examiner in Item 4 of the Action. The motor was provided in the application as filed, e.g., see original claim 19 and p. 6, lines 4-13

of PCT/AU2004/001648. An arrow indicating that the member is movable within the frame, e.g., via operation of the motor, has been added to enhance the figure. Movement of the member was provided throughout the application as filed, e.g., see the original claims, e.g., original claim 1 and elsewhere. Accordingly, Applicants submit that no new matter is introduced by the amendment.

**The Drawings, As Amended, Show Every Feature of the Claimed Invention**

The Action objected to the drawings under 37 C.F.R. 1.83(a) for allegedly failing to show every feature of the claimed invention. To the extent that the objections are applied to the amended drawings, Applicants respectfully traverse.

With respect to the first and second panels being coplanar with the frame, Applicants submit that the figures as filed comply with 37 C.F.R. 1.83(a). Figure 4 clearly shows coplanarity between the first panel and the frame. While the second panel is not shown to be coplanar with the frame in Figure 3, it is readily apparent to one of skill that as the movable member of the apparatus is rotated through space, the second panel will indeed be coplanar with the frame. Accordingly, Applicants request withdrawal of the objections to the drawings regarding the first and second panels being coplanar with the frame.

With respect to a pair of legs extending from a first panel, legs 76 and 78 are clearly shown in Figure 4. Accordingly, the objections to the drawings regarding the pair of legs should be withdrawn.

Figure 3 is amended herein to show the remote controlled motor of claim 20. Accordingly, the objections to the figures – as they relate to claim 20 – should be withdrawn.

**The Claims Are In Proper Dependent Form**

Claims 12, 13, 21 and 22 are objected to under 37 C.F.R. 1.75(c) for allegedly being of improper dependent form. To the extent that the objections are applied to the amended claims, Applicants respectfully traverse.

The Action alleges that claims 12 and 13 fail to further limit claim 11 because the “first position” of claim 12 and the “second position” of claim 13 “denote intended use and not positively-claimed structure.” Applicants respectfully disagree with the Action’s

conclusion, at least because it is indeed a structural feature of the apparatus that the first and second panels are coplanar with the frame and substantially covering the opening of the frame in the first and second positions, respectively. As such, the objections to claims 12 and 13 should be withdrawn.

Regarding claim 21, the Action alleges that the term “product” denotes intended use, and therefore the limitation of claim 21 fails to further limit claim 1. Claim 21 is amended herein to recite an apparatus according to claim 1, wherein the apparatus is configured to receive any one of: a projector unit, keyboard, telephone or monitor. Accordingly, claim 21 further limits claim 1 and the objection should be withdrawn.

With respect to claim 22, the Action alleges that “the term ‘surface’ is viewed as denoting intended use, and not positively claimed structure,” and therefore fails to further limit claim 1. Claim 22 is amended herein to recite an apparatus according to claim 1, wherein the frame is configured to be mounted on or in a surface selected from: a ceiling, a wall, a floor, a desktop, and a part of a piece of furniture. Accordingly, claim 22 further limits claim 1 and the objection should be withdrawn.

### **The Claims, As Amended, Are Definite**

In Item 11, claims 1 and 11-22 are rejected under 35 U.S.C. §112, second paragraph, as allegedly indefinite because of the term “surface.” To the extent that these rejections are applied to the amended claims, Applicants respectfully traverse.

The rejections as applied to claims 1 and 11-12 for the use of the term “surface” are rendered moot by the amendment to claim 1 herein. Amended claim 1 is directed to an apparatus for housing a product within a cavity comprising a frame having an opening and mounted on or in a surface of said cavity . . .” In light of this amendment, the rejections under §112, second paragraph, should be withdrawn.

In Item 12, claims 12, 13 and 17 are rejected under 35 U.S.C. §112, second paragraph, as allegedly indefinite because of the term “level.” Claims 12, 13 and 17 are amended herein to replace the term “level” with the term “coplanar.” Because the definition of coplanar, e.g., being or operating in the same plane, is well understood by one of skill in the art, the amended claims are definite and the rejections should be withdrawn.

In Item 13, the Action alleges that claim 17 does not meet 35 U.S.C. §112, second paragraph, for purportedly failing to recite sufficient structural elements and interconnection of the elements to positively position and define the structure(s) and component(s) of the claimed invention. Applicants respectfully disagree with the Action's conclusion.

Claim 17 includes all of the structural elements and interconnections recited in the claims from which claim 17 depends, e.g., claims 1, 11, 14, 15 and 16. Applicants submit that – when read in light of the claims from which it depends – claim 17 contains structural elements and interconnections that are more than adequate to render the claim definite. Moreover, the example embodiment of the invention shown in Figures 3 and 4 clearly illustrate to one of skill an example side frame configuration for enabling the first and second panels to remain coplanar with the frame in the first and second positions, respectively. Accordingly, the rejection of claim 17 as allegedly failing to comply with 35 U.S.C. §112, second paragraph, should be withdrawn.

The rejections of claims 14-16 and 18-22 under 35 U.S.C. §112, second paragraph, should be withdrawn because, as indicated above, their base claims are definite.

### **The Claims Are Free of Martin and Vogel**

Claims 1, 11-14 and 21-22 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by Martin (USPN 1,894,185). Claims 1, 11-15 and 21-22 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by Vogel (USPN 2,048,363). To the extent that these rejections are applied to the amended claims, Applicants respectfully traverse.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. MPEP §2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Claim 1 is amended herein to include the limitations that the pivot assembly is located adjacent an opening to said cavity, and that the second position of the apparatus renders the product in view and physically accessible and ready for use by a user.

Martin and Vogel – disclosing various stationary trays and devices for pigeonholing or storage of products – relate to an entirely different function and mechanism to that

of the present invention. The present invention relates to housing a product (e.g., a computer or other valuable commodity) intended for physical use in a manner so as to allow a product housed therein to be physically movable from a first to a second position and vice versa, in such a manner that the product housed within can be moved between the first and second positions where the first position conceals the product and the second position renders the product physically accessible and immediately usable by the user, without requiring the product to be physically removed from the apparatus or the housing in question.

In this manner, the apparatus of the present invention provides a ready means of mobilizing a valuable product, e.g., a computer or other expensive piece of equipment, for immediate physical use and returning the product to a position disguised and hidden from view with minimal interruption and physical movement from the preferred environment in which the product is positioned.

Martin, for example, relates to a filing rack which in either a first or second position (i.e., the filing rack being opened or closed), manifestly draws attention to the fact that it is a storage system which very clearly is a method for filing products of any description and does not serve as a means of disguising the fact that the product is being hidden from view and would in fact draw attention to itself, rather than functioning as a disguise.

In addition, the manner in which the filing rack of Martin deals with the product housed therein and the movement from the first and second position, does not render the product, i.e. papers, files or other pieces of stationary, physically accessible and **ready for use** by the user. Similar arguments apply to Vogel.

In summary, Martin and Vogel fail to teach each and every element set forth in claim 1, at least because neither reference teaches an apparatus that is concealed from view in a first position, or that renders a product physically accessible and ready for use by a user in a second position. Accordingly, the rejection of claim 1 (and claims dependent therefrom) for alleged anticipation by Martin and Vogel should be withdrawn.

### **The Claims Are Not Obvious**

Claims 16-18 were rejected under 35 U.S.C. §103(a) as allegedly obvious over Vogel, further in view of McNeil (D410,163). Claims 19 and 20 were rejected under 35

U.S.C. §103(a) as allegedly obvious over Vogel, further in view of Nott (US 2002/0079792). To the extent that these rejections are applied to the amended claims, Applicants respectfully traverse.

In order to meet its burden in establishing a rejection under 35 U.S.C. §103(a), the Patent Office must first demonstrate that the combined prior art references teach or suggest all the claimed limitations. MPEP § 2143(A). In addition to demonstrating that all elements were known in the prior art, the Patent Office must also articulate a reason for combining the elements. See, e.g., *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007) ("KSR") at 1741; *Omegaflex, Inc. v. Parker-Hannifin Corp.*, 243 Fed. Appx. 592, 595-596 (Fed. Cir. 2007) citing KSR; and *Innogenetics, N.V. v. Abbott Laboratories* 512 F.3d 1363, 1373, 85 USPQ2d 1641 (Fed. Cir. 2008). Furthermore, according to MPEP § 2143.01 (V), if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.

The rejection of claims 16-18 over Vogel, further in view of McNeil, cannot be sustained, at least because combining these references does not arrive at the present invention. For example, neither reference teaches an apparatus that is concealed from view in a first position, or that renders a product physically accessible and ready for use by a user in a second position. In fact, the subject matter of McNeil is an **ornamental design** for a storage box – which would suggest or motivate one of skill to arrive at exactly the opposite (i.e., a storage box intended to be seen) of what is claimed in the present application (e.g., an apparatus intended to conceal from view a product in a first position). At least because the combination of Vogel and McNeil does not arrive at the subject matter of claims 16-18, and McNeil actually teaches away from the present invention, the rejection of these claims for alleged obviousness should be withdrawn.

The rejection of claims 19 and 20 as allegedly obvious over Vogel, further in view of Nott, is likewise deficient, in that the combination of the references does not arrive at the subject matter of claims 19 and 20. As was the case for combining Vogel and McNeil, the combination of Vogel and Nott lacks numerous limitations found in base claim 1, e.g., an apparatus that is concealed from view in a first position, renders a product physically

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accessible and ready for use by a user, etc. For this reason alone, the rejection of claims 19 and 20 for alleged obviousness, over Vogel and further in view of McNeil, must be withdrawn.

## CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the claims are deemed not to be in condition for allowance after consideration of this Response, a telephone interview with the Examiner is hereby requested. Please telephone the undersigned at (510) 337-7871 to schedule an interview.

The Commissioner is hereby authorized to charge any additional fees associated with this paper or during the pendency of this application, or credit any overpayment, to Deposit Account No. 50-0893.

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Respectfully submitted,



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### Attachments:

- 1) A transmittal sheet;
- 2) Replacement Drawing Sheet 3; and,
- 3) A receipt indication postcard.